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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/734,772
Filing Date: December 12, 2003
Appellant(s): HEINTZMAN ET AL.

Jeffrey A. Pyle
Reg. No. 34,904
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/04/2007 appealing from the Office action mailed 09/04/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

6,618,045

LIN

9-2003

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

(a) Claim Rejections - 35 USC § 102

(i) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(ii) Claims 1-5, 7, 9-21 and 24- 29 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Letters Patent No. 6,870,529 (“Davis”).

Regarding claim 11, Davis, Fig. 1, teaches an apparatus (a computer system 10, see Fig. 1) for modifying visual presentations based on ambient conditions and user preferences, comprising: an interface (Bus 54, other input/output (I/O) devices 58, and a brightness control mechanism 64), see Fig. 2; and a control unit (CPU 50 and a Brightness control monitor 60) communicatively coupled to the interface and adapted to: receive data indicative of light conditions proximate to a visual presentation device (LCD Panel 28) [*underlined emphasis added*], see Fig. 4(step 104), col. 4, lines 17-21, and lines 26-29; authenticating a user identification, see Fig. 4 (step 100), col. 3, lines 4-5 and col. 4, lines 50-52, and col. 5, lines 18-21; receiving data associated with at least one visibility profile associated with the authenticated user identification (the preferred brightness level 88a-88m associated with the current user identifier stored in a data structure 78 is retrieved), see Fig. 3(data structure 78) and Fig. 4(step 108), and col. 4, lines 50-56; and determining visual data to be displayed by the visual

presentation device based on data indicative of light conditions and the visibility profile, see Fig. 4, and col. 5, lines 8-13, and lines 24-27.

Regarding claims 12-18, Davis further teaches: (i) the control unit (50 and 60) is adapted to determine an ambient light intensity, see col. 4, lines 52-53; (ii) the control unit is adapted to receive an indication of at least one deficiency in vision of a user and to compare for determining a desired brightness to display the determined visual data, see Figs. 2 and 3; and col. 2, lines 33-49; (iii) the visual presentation device is a laptop computer, see Fig. 1; and (iv) a detector (30) for acquiring the data indicative of light conditions proximate to the at least one visual presentation device, see Fig. 1. Claims 12-18 are dependent upon the base claim 11, and are therefore rejected on the same reasons set forth in claim 1, and by the reasons noted above.

Regarding claims 1-5, 7 and 9-10, which are method claims corresponding to the apparatus claims 11-18, and are therefore rejected on the same basis set forth in claims 11-18 as discussed above.

Regarding claim 19, Davis teaches an apparatus, comprising: means (50 and 60) for receiving data indicative of light conditions proximate to a visual presentation device (28), for authenticating a user identification, for receiving data associated with one visibility profile associated with the authenticated user identification, and for determining visual data to be displayed by the visual presentation device based on the received data indicative of light conditions and the data associated with the visibility profile, see the references recited in claim 11 above.

Regarding claims 20, 21 and 24, Davis, Fig. 1, teaches a computer system (10), comprising: one visual presentation device (28) adapted to display visual data; one storage

device (74) adapted to store user profile database containing a plurality of users visibility profiles (78); one detector (30) for acquiring data indicative of light conditions proximate to the one visual presentation device; and a processor-based device (50 and 60) adapted to receive the data indicative of light conditions proximate to the visual presentation device, authenticate a user identification, receive data associated with one visibility profile associated with the authenticated user identification, and determine the visual data to be displayed by the visual presentation device based on the received data indicative of light conditions and the received data associated with the at least one visibility profile; wherein the visual presentation device is a laptop computer, see references recited for claims 11 and 12-18 above.

Regarding claims 25-29, Davis does teach that the computer system (10) comprising a computer program product in a computer readable medium which when executed by a processor performs the claimed steps comprising: receiving the data indicative of light conditions proximate to the visual presentation device; authenticating a user identification; receiving data associated with at least one visibility profile associated with the authenticated user identification; determining visual data to be displayed by the visual presentation device based on the received data indicative of light conditions and the received data associated with the at least one visibility profile; receiving an indication of at least one deficiency in a user's vision; and determining a desired brightness, see Figs. 1-4, col. 4, line 7 to col. 5, line 33.

(b) Claim Rejections - 35 USC § 103

(i) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 2629

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(ii) Claims 6, 8, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Letters Patent No. 6,870,529 (“Davis”) in view of U.S. Letters Patent No. 6,618,045 (“Lin”).

Davis teaches generally all except for the use of: a plurality of visual presentation devices, a plurality of detectors deployed proximate to the plurality of visual presentation devices, and the step of requesting the information to be displayed on the visual presentation device from a remote server. Lin does teach a method and an apparatus for modifying visual presentations based on environment lighting conditions and user references; wherein, a plurality of visual presentation devices (47 and 49), a plurality of detectors (74) deployed proximate to the plurality of visual presentation devices, and the step of requesting the information to be displayed on the visual presentation device from a remote server (50), see Figs. 1-3, col. 3, line 65 to col. 4, line 45. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the above-identified teachings as taught by Lin in the Davis device for producing the claimed invention because this would allow the remote control of the visual presentation devices settings/functions, see Lin, col. 4, lines 54-58. By this rationale, claims 6, 8, 22, and 23 are rejected.

(10) Response to Argument

(a) Claims 1-5, 7, 9-21 and 24- 29 stand rejected under 35 U.S.C. 102(a) as being anticipated by Davis.

The appellant's arguments provided in item VII (A), pages 10 to 11 of the 12/04/2007 Appeal Brief, have been fully considered but they are not persuasive because of the following reasons:

(i) The appellant argued that: each of the independent claims 1, 11, 19-20, and 25 was amended to recite the limitation: "a user authentication prior to retrieval of a user profile associated with the authenticated user identification"; and Davis fails to disclose said limitation.

The Examiner respectfully disagrees because of:

First, it is noted that each of the independent claims 11 and 20 recite the method steps after the clauses: "and adapted to:", see line 2 of claim 11, or "adapted to:", see line 6 of claim 20; such a clause that suggests or make optional but does not require the steps to be performed or does not limit said claims to a particular structure does not limit the scope of a claim or claim limitation. See MPEP 2111.04 [R-3]. See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997); and *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969).

Second, it is further noted that the claim language of each of the independent claims 1, 11, 19-20, and 25 does not require the method steps, which include the step of "authenticating a user identification", to be performed in the order written. Nothing in the claim directly or implicitly requires such a narrow construction.

Clearly, each of the independent claims 1, 11, 19-20, and 25 does not require the limitation: "a user authentication prior to retrieval of a user profile associated with the authenticated user identification", *[underlined emphasis added]*, as argued by the appellant.

However, the Examiner finds that Davis does teach the limitation: “a user authentication prior to retrieval of a user profile associated with the authenticated user identification”. For example, Davis Fig. 4 shows the user log in process (step 100: read user ID) is performed prior to the retrieval of the preferred brightness level associated with the user identifier (step 108: read brightness level), see also, col.5, lines 16-27.

(ii) The appellant also argued that: Davis does not expressly or inherently disclose “authentication”; Davis teaches only user identification, not authentication; and Davis only discusses “login” and “identification”, neither of which necessarily implies “authentication”.

The Examiner respectfully disagrees because of:

First, it is noted that, only claims 1, 19, and 25 among the independent claims 1, 11, 19-20, and 25, require the method step of “authenticate a user identification”.

Second, the claims do not set forth a clear definition of the claim term “authenticate a user identification”. Nothing in the claims, the specification, or the prosecution history provides a clear definition of the term “authentication” or “authenticating”. Dictionary definitions are consulted in establishing a claim term’s ordinary meaning. *Tex. Digital Sys., Inc., v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1813, 1818 (Fed. Cir. 2002). The term “authentication” or “authenticating” is therefore given its ordinary meaning commonly used in the related computer art as defined in the underlined portion of the definitions provided in the “Microsoft Press Computer Dictionary”, Third Edition, Published by Microsoft Press, 1997, below:

authentication \ä-then`tə-kā`shən, ô-then`tə-kā`shən\ *n.* In a multiuser or network operating system, the process by which the system validates a user's logon information. A user's name and password are compared against an authorized list, and if the system detects a match, access is granted to the extent specified in the permission list for that user. *See also* logon, password, permission, user account, user name.

Clearly, Davis does teach the a multiuser computer system (a computer system 10, which is used by a current user or “as other users log on”) and a log in process using user identification (logging in user ID), see Fig. 4 (step 100), col. 3, lines 4-5 and col. 4, lines 50-52, and col. 5, lines 18-21.

Accordingly, Davis does teach the claimed limitation of “authenticating a user identification”.

(b) Claims 6, 8 and 22-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Davis and Lin.

The appellant's arguments provided in item VII (B), pages 11 to 12 of the 12/04/2007 Appeal Brief, have been fully considered but they are not persuasive because of the following reasons:

The appellant argued that neither Davis nor Lin teach the “authentication”; and therefore the prior art of record fails to render obvious any of the claims 3-10, 13-15, 24, and 27-29.

The Examiner respectfully disagrees because of:

Art Unit: 2629

- (i) First, Davis and Lin references are used to rejected claims 6, 8 22, and 23 instead of the claims 3-10, 13-15, 24, and 27-29;
- (ii) Second, Lin reference is not relied upon for the teaching of the “authentication”; and
- (iii) Last, Davis reference is relied upon for the teaching of the “authentication” as discusses in item **(10)(a)(ii)** above.

Clearly, Davis in combination with Lin does teach the claimed invention of claims 6, 8 22, and 23 as recited in the rejection under 35 U.S.C. 103(a) discussed in item **(9) (b)** above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Henry N Tran/

Primary Examiner, Art Unit 2629

Conferees:

1. SPE Amare Mengistu: /Amare Mengistu/

Supervisory Patent Examiner, Art Unit 2629

2. SPE Alexander Eisen: /Alexander Eisen/

Supervisory Patent Examiner, Art Unit 2629